

## **AGREEMENT FOR ACCESS TO DRIVER'S LICENSE AND MOTOR VEHICLE RECORDS**

This Agreement is made between \_\_\_\_\_, a person or entity with its address at \_\_\_\_\_ ("Sub-vendor" or "End User"), and New Mexico Interactive, LLC (hereafter "Vendor" or "Authorized Recipient") provider of online services, known as New Mexico Interactive, pursuant to a long-term contract with the New Mexico Taxation and Revenue Department.

### **Definitions**

***"New Mexico Driver's Privacy Protection Agreement" or "NMDPPA"*** is a document indicating the End User's intended use of MVD records. The NMDPPA states that the End User shall not obtain, use, resell, or transfer the information for any purpose prohibited by Section 66-2-7.1 NMSA 1978 or the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721 et seq.

***"Agreement Effective Date"*** is the date when the last signature needed to make this Agreement effective is affixed thereto.

***"New Mexico Interactive Registration Agreement"*** is required by New Mexico Interactive, as a condition of access to New Mexico Motor Vehicle Division online services. This Agreement outlines terms of use and is signed annually by the Registrant.

***"Disclosure" or "Disclosed"*** is the sale, giving away without compensation, or other transfer or revelation of the information or data contained in a Driver's License Record (DLR), or Title, Lien and Registration Record/Motor Vehicle Record (TLR).

***"MVD" or "Division"*** is the New Mexico Motor Vehicle Division.

***"DPPA"*** is the Driver Privacy Protection Act (18 USC § 2721, et seq.).

***"End User"*** is a qualified person or entity that requests and obtains a copy of a DLR, or TLR electronically from the Vendor/ Authorized Recipient or from a Sub-vendor. "End User" also includes all persons or entities that subsequently obtain and use such Records from an "End User."

***"Interactive Service"*** is a service operated by Vendor/Authorized Recipient to allow Sub-vendors or End Users to electronically submit a request for Records or data services and the requested Records or services are delivered electronically to the Sub-vendor or End User.

***"Driver History Record" or "DLR"*** is any of class of records compiled and maintained by the MVD pertaining to a driver's license, a permit, a motor vehicle registration, a motor vehicle title or an identification document issued by the Division.

***“Personal Information” or “PI”*** is defined in the federal Driver’s Privacy Protection Act (“DPPA”) and Section 66-1-4.14F NMSA 1978, as amended from time to time.

***“Records Containing Personal Information” or “RCPI”*** are those DLRs, or TLRs in which any data field of Personal Information has not been removed.

***“Records Without Personal Information” or “RWPI”*** are those DLRs, or TLRs from which the Personal Information has been removed.

***“Records”*** are the motor vehicle records; title, registration, or lien records or any portion of the records maintained by the MVD as defined under Section 66-2-7.1 NMSA 1978.

***“Statement of Confidentiality”*** is a statement from an employee, officer, staff member, temporary employee, or subcontractor of Vendor or Sub-vendor that the confidentiality of any information contained within MVD Records obtained by the Sub-vendor shall be maintained at all times and that Records shall not be distributed, sold or shared with any third party or used in any way except as expressly authorized by law.

***“Subcontractor”*** is an entity that provides goods and/or services to the Vendor who may have direct or indirect contact with Records while providing such goods and/or services.

***“Sub-vendor”*** is a business entity that obtains Records from a Vendor for purposes of distributing the Records to End Users.

***“Title, Lien or Registration Records” or “TLRs”*** are Motor Vehicle Records that pertain to motor vehicles that are or were titled or registered in New Mexico, or which have a lien placed upon them which is noted in New Mexico.

***“Vendor”/“Authorized Recipient”*** is an entity that serves as the MVD’s representative for the distribution of Records to Sub-vendors and End Users.

### Recitals

WHEREAS in order to improve legally permitted electronic access to DLRs, and TLRs and other Records and online services, the New Mexico Motor Vehicle Division (“MVD”) has elected to participate in the online services initiative, and

WHEREAS Sub-vendor/End User desires to enter into an Agreement with Vendor for the purpose of receiving Interactive Service(s) through Vendor, to certain Records specified herein from the database(s) maintained by, and under the custody and control of, the MVD, and

WHEREAS Sub-vendor desires the Interactive Service(s) order to provide copies of MVD Records to its customers who meet the legal criteria for release to them of DLRs, and/or TLRs (“End User,” as hereinafter defined), whether or not the Records contain PI, and

WHEREAS each Interactive Service offered by Vendor is fully described, with its terms, conditions, and price, in separate Schedules to this Agreement, and

WHEREAS Sub-vendor/End User shall signify its desire to receive access to each Interactive Service by signature on the separate New Mexico Interactive Registration Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, including the amounts hereinafter provided to be paid by Sub-vendor/End User to Vendor for such live online access, the parties hereto agree as follows:

1. The Definitions and Recitals are a part of this Agreement.

#### I. Treatment by Sub-vendor of RWPI.

2. RWPI are not subject to regulation by the DPPA and thus are Public Records as that term is defined in New Mexico law. As such, they may be disseminated to an End User by Sub-vendor without compliance with the same rules as apply to Records containing PI. However, the applicable Fee applies to disclosure or transmittal to Sub-vendor of a Record from which PI has been permanently removed.

#### II. Treatment by Sub-vendor of RCPI.

3. Sub-vendor agrees that RCPI are subject to regulation regarding dissemination or disclosure to End Users. Sub-vendor agrees to require all its End Users to acknowledge and agree to this as well.
4. Records provided by Vendor will only be used by Sub-vendor, and Sub-vendor, in accordance with the restrictions imposed by the MVD, agrees to require its End Users to agree comply with all legal and contractual requirements restricting use if such Records contain PI when the Record is furnished to the End User.

5. Sub-vendor shall pay to Vendor a Fee for the Interactive Service(s) in accordance with the attached Schedules and pursuant to the general terms and conditions of the New Mexico Interactive Registration Agreement.

6. Sub-vendors shall require those End Users that are receiving RCPI to complete and deliver to Sub-vendor the following:

- a. A written agreement, signed in advance of any Disclosure, wherein the End User agrees at a minimum to:
  - (1) abide by all state and federal legal restrictions and conditions upon use and Disclosure of the PI contained within a Record,
  - (2) keep sufficient books and records to evidence use in accordance with the Intended Use, and
  - (3) abide by the terms and conditions of this Agreement.

7. The Sub-vendor and/or End User shall comply with the MVD policy to assist in the effective administration of the DPPA, under which use of a RCPI is restricted to use, one time, for a legitimate purpose by a Sub-vendor and/or End User. The Sub Vendor and/or End User shall destroy the RCPI/RWPI as set out in section 8 below, and in the case of RCPI, ensure that PI is not retained except as integrated into the intended use identified in the New Mexico Driver's Privacy Protection Act Agreement. The Sub-vendor and/or End User cannot give, sell, or loan a RCPI or RWPI they have obtained or, in the case of RCPI, the PI it contains, to any other person or entity for any purpose whatsoever; provided however, that in the case of an information reseller who is the Sub-vendor, the information reseller's End User must be contractually bound to the information reseller to abide by the Single Use policy of MVD regarding the End-User's use of the DLR, and the disclosure or transfer of the DLR to the Requestor.

8. Sub-vendor agrees to destroy all Records remaining in its possession when they are no longer needed for Sub-vendor's purposes under this Agreement after its use or as required by State or Federal law. Sub-vendor agrees to require an End User to agree to destroy the Record (except insofar as the information is incorporated into the permitted use) after its use. Records obtained from Vendor by Sub-vendor may not be used for any purpose not expressly authorized by law and this Agreement. Sub-vendor agrees that it shall not use any Records provided under the terms of this Agreement except for sale to End Users. The Sub-vendor is prohibited from using the Records for any other purpose, including, but not limited to those prohibited purposes identified in New Mexico law or by this Agreement.

9. Sub-vendor agrees, and shall require its End Users to agree, to abide by the policies of MVD, as modified from time to time, and the laws of the United States of America and the State of New Mexico regarding the disclosure of Records issued to Sub-vendor or to End Users respectively.

10. Sub-vendor agrees that neither it nor Vendor are representatives of MVD for purposes of Records data interpretation and therefore, are not authorized by MVD to interpret the content of Records.

11. Sub-vendor agrees to implement reasonable system and data security procedures to protect Records from unauthorized disclosure. For Sub Vendors, such reasonable procedures must include and for End users such reasonable procedures may include, but are not limited to, username and password access policies, firewalls, background investigations of employees or any other individuals authorized to access Records, encryption during transmission, and execution of confidentiality agreements by such employees or other individuals with authorized access.

12. Sub-vendor agrees to keep and maintain, in accordance with commercially reasonable confidential data archive standards and state and federal law, for a period of time equal to five years after the date a Record is acquired from Vendor books and records, of all transactions conducted under this Agreement, including financial accounts:

- a. documenting disclosure of any Records in or under its possession or control,
- b. documenting its systems and operation for handling of and safeguarding from unauthorized Disclosure of Records under this Agreement,
- c. documenting its compliance with the other terms and conditions of this Agreement and
- d. documenting each End User's qualification to obtain the Records, if applicable.
- e. Sub-vendor will make available, and agrees to require its End Users to agree to make available, to Vendor, the MVD, or the authorized representative of either of them, at any reasonable time, all such books and records including financial accounts, for auditing, compliance and monitoring purposes. Either Vendor or the MVD shall have the right, but not the obligation, to conduct any inquiry or audit hereunder at any time.

13. Vendor reserves the right to withdraw any service from Sub-vendor without consulting Sub-vendor prior to withdrawing such service, and shall have no liability whatsoever to Sub-vendor and/or any End User in conjunction with the withdrawal of any such service.

14. Sub-vendor agrees to indemnify, hold harmless, and release Vendor and the State of New Mexico and their employees, agents, and contractors from and against any and all loss, damages of any kind, injury, liability, court awards, suits and proceedings, including costs, expenses and attorneys' fees, arising from the performance of this Agreement or the performance, disclosure, or use of any data contained in any records maintained by MVD by the Sub-vendor, its officers, agents, volunteers or employees, except insofar (with respect to indemnity, hold harmless and release of the State of New Mexico) as they may result from the actions or inactions of the State of New Mexico, its agencies, employees, contractors or subcontractors; and except insofar (with respect to indemnity, hold harmless and release of Vendor)

as they may result from the actions or inactions of Vendor, its parent corporation, its subsidiaries, officers, agents, contractors, subcontractors, or employees. Sub-vendor agrees to require the same indemnity, hold harmless and release provisions in favor of Releasees from each of its End Users.

15. Sub-vendor shall report to Vendor, and shall require that its End Users report to Sub-vendor who shall then report to Vendor, the following occurrences promptly upon the discovery of:

- a. any known misuse of and/or breach of security or confidentiality involving a Record furnished to Sub-vendor from Vendor, or from Sub-vendor to an End User;
- b. any litigation or Notice of Claim involving the content or handling of a Record furnished to Sub-vendor or from Sub-vendor to an End User. Such an occurrence shall be reported by End Users to Sub-vendor and by Sub-vendor to Vendor within three (3) business days of service of process.
- c. any non-monetary breach of the Sub-vendor's written agreement with an End User. Such an occurrence shall be reported by End Users to Sub-vendor and by Sub-vendor to Vendor within five (5) business days of discovering such breach.

16. Sub-vendor shall, and shall require its End Users to, be capable of generating, within seven days of a request by Vendor or MVD, a history of its Disclosures over time of any Records obtained under this Agreement.

17. Sub-vendor shall not, and shall require its End Users to not, use any PI obtained under this Agreement for direct mail or email solicitations, advertising, or surveys, nor shall it compile or publish, or permit others to compile or publish, including on the Internet, any portions of the PI furnished to it in a Record.

18. Sub-vendor agrees, and shall require its End Users to agree, that it (or an End User) is subject to immediate remedial action by Vendor or MVD or both, in the event of violation of this Agreement. Such remedial action may range from suspension for a fixed period of time, of Sub-vendor from using a service, or the requirement that Sub-vendor suspend a End User from receiving Records, to termination of the privilege of receiving access to a Service, or in the case of a End User, from receiving Records, and may include liability of Sub-vendor or End User to Vendor and/ or the MVD.

19. Sub-vendor agrees, and shall require its End Users to agree, that no third-party rights are created or acquired by reason of this Agreement.

20. This Agreement shall have a term of one (1) year from the date of signing, and may be automatically renewed for successive one (1) year terms.

Further, this Agreement may be terminated in its entirety or any service provided under this Agreement may be terminated as provided below, provided however, the

termination does not relieve the parties of any obligation regarding confidentiality and record keeping, obligations which survive termination of this Agreement:

- a. at any time upon sixty (60) days advance notice by an instrument in writing, signed by a duly authorized representative of the party wishing to terminate, and mailed to the other party.
- b. immediately upon any material breach of any covenant herein at the option of the non-breaching party.
- c. immediately by Vendor or MVD upon discovery by Vendor or MVD that any information provided to Sub-vendor by Vendor has been used or disclosed in violation of this Agreement, or applicable State or Federal law.
- d. immediately upon termination of the Vendor's contract with the TRD.
- e. any notice of termination shall be deposited with the United States Postal Service, restricted delivery, return receipt requested, correctly addressed to the party to receive notice, and postage prepaid.
- f. The New Mexico Motor Vehicle Division's address for notice is:

Motor Vehicle Division  
 Attention: Keith Perry, Director  
 1100 S. St. Francis Dr.  
 Santa Fe, NM 87505-4147

21. Sub-vendor acknowledges and agrees to require its End Users to acknowledge, that the continuing ownership of the original record underlying each copy of a Record remains with MVD.

22. Sub-vendor must be able to demonstrate at all times that the MVD Records can be separately identified from records obtained from other sources.

23. Sub-vendor and Vendor each warrant that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the party to its terms. The person executing this Agreement on behalf of each party warrants that such person has full authorization to execute the Agreement.

24. The New Mexico Driver's Privacy Protection Agreement may have original signatures or facsimile copies thereof. Sub-vendor agrees to file with Vendor a NMDPPA to be kept on file by Vendor. Sub-vendor's NMDPPA shall be personally delivered, or sent by registered or certified mail, return receipt requested to Vendor's notice address in this Agreement. Sub-vendor must require its End Users to have an agreement in place that obliges End Users to abide by all state and federal legal restrictions and conditions upon use and Disclosure of the PI contained within a Record prior to any disclosure PI under this Agreement.

25. Sub-vendor shall not initiate any press and/or media contact nor respond to press/media requests regarding this Agreement and/or any related matters concerning the State without the prior written approval of Vendor and MVD.

26. The laws of the State of New Mexico and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Sub-vendor agrees that for this Agreement and for any End User agreements with Sub-vendor, venue for any action between the parties for claims concerning this Agreement shall be the County of Santa Fe, New Mexico. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the contract is capable of execution.

27. This Agreement constitutes the entire agreement of the parties and supersedes all other prior written or oral agreements between the parties with respect to the subject matter herein.

28. This Agreement may be changed, modified, or amended at any time by an instrument in writing, signed by duly authorized representatives of both parties hereto, or by Vendor unilaterally. In the case of unilateral modification, notice shall not be required for the modification to be effective, but shall be sent as soon as reasonably practical to Sub-vendor.

29. Vendor's address for notice is:

Aaron Boyd, General Manager  
New Mexico Interactive, LLC  
1221 Flagman Way, Suite B4  
Santa Fe, New Mexico 87505

With a copy to:  
General Counsel (LEGAL NOTICE)  
New Mexico Interactive, LLC c/o NIC Inc.  
25501 West Valley Parkway, Suite 300  
Olathe, KS 66061

30. Sub-vendor/End Users address for notice is:

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IN WITNESS to their agreement to all of the above and foregoing, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

Sub-vendor/End User is \_\_\_/is not \_\_\_ an information reseller (to be completed by Sub-vendor/End User).

**Sub-vendor**

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Typed Title)

**New Mexico Interactive, LLC**

\_\_\_\_\_  
Aaron Boyd  
General Manager

\_\_\_\_\_  
Date

## **Schedule A**

### **DLR Interactive and Point-to-Point Service**

This Schedule A is subject to the terms and conditions of the Agreement for Access to Drivers License and Motor Vehicle Records entered into on the \_\_\_\_ day of \_\_\_\_, 201\_\_ (the “Agreement”), by and between New Mexico Interactive, LLC (hereafter “Vendor”), and (“Sub-vendor”) and the Terms and Conditions of the New Mexico Interactive Registration Agreement entered into on the \_\_\_\_ day of 201\_\_ (“Monthly Account Holder Agreement”), by and between Vendor and Sub-vendor.

Under the terms of the Agreement, this Service allows Sub-vendor, which meets the eligibility criteria set forth under Drivers Privacy Protection Act. (DPPA) 18 USC § 2721 et. seq. (Public Law 103-322), and Section 66-2-7.1 NMSA 1978 to receive records from MVD's DLR database. Sub-vendor agrees that restrictions on the use of the driver's license information may be modified by Vendor upon written notice to Sub-vendor at any time.

This service provides two methods for Sub-vendor to request a DLR for which the Sub-vendor is qualified to receive, subject to any limitations on access to or use of the DLR imposed by MVD, as soon as reasonably practical following the Sub-vendor's electronic request.

#### **The Interactive Service:**

- Allows an authenticated Sub-vendor or End User to search for individual DLR
- Requires the Sub-vendor or End User to state the intended use of the DLR being requested
- Requires the Sub-vendor or End User to input the driver license number and either the date of birth or the last name of the individual
- Allows the Sub-vendor or End User to view and print the DLR if one is located in the database
- Allows the Sub-vendor or End User to view a history of previous searches

#### **The Point-to-Point Service:**

- Allows an authenticated Sub-vendor or End User to request individual DLR
- Requires Sub-vendor or End User to submit record requests using a standard format determined by Vendor
- Assistance is provided by Vendor's technical staff with the initial set-up for a Sub-vendor or End User
- Returns DLR located in the database as a flat text file

Sub-vendor or End User shall pay to Vendor a Fee (defined below) for the Interactive Service in accordance with the following:

1. \$6.50 per DLR (“Fee”) for each DLR that is returned to Sub-vendor or End User whether or not such DLR contains PI.
2. A no-hit result generates a Fee.
3. Disclosure of any one or more elements of a DLR is considered disclosure of a DLR and generates a Fee.

## **Schedule B**

### **Driver Monitoring Interactive and Point-to-Point Service**

This Schedule B is subject to the terms and conditions of the Agreement for Access to Drivers License and Motor Vehicle Records entered into on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the “Agreement”), by and between New Mexico Interactive, LLC (hereafter “NMI”), and (“Sub-vendor”) and the Terms and Conditions of the New Mexico Interactive Registration Agreement entered into on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (“Registered User Agreement”), by and between NMI and Sub-vendor.

Under the terms of the Agreement, this Interactive Service allows Sub-vendor to monitor certain changes to data fields in specific Driver History Records requested by Sub-vendor for the purpose of assisting its clients with insurance re-underwriting, subject to any limitations on access to MVD’s database imposed by MVD.

#### **Driver Monitoring Point-to-Point Process:**

Sub-vendor shall provide record requests to NMI in the following manner: By the date specified within the Specification Document of each month, Sub-vendor will provide an electronic file containing the requested DLRs for monitoring, and NMI will provide a response to Sub-vendor within six business days following receipt of the electronic file. Sub-vendor will send an electronic file containing the requested records via SFTP. The file format will be specified in the Specification Document supplied by NMI. For each record requested, the file will indicate whether a 1-month, 6-month, or 12-month monitoring is required.

Upon receipt of the file, NMI will query the requested records for any changes to selected data fields within MVD’s driving record database. All records that are identified as changed will automatically be sold as full Driver History Records to Sub-vendor, each of which will incur a full Driver History Record charge.

#### **Pricing:**

Sub-vendor shall pay to NMI a fee of \$0.12 for each driver record monitored, and \$6.50 per driver record purchased.

The invoiced amount for a monitored Driver History Record will be based on the overall number of records contained in the Sub-vendor’s submitted file and the requested monitoring period for each record.

For example, the fees are set forth as follows:

- a one-month lookback: \$.12
- a six-month lookback: \$.72
- a twelve-month lookback: \$1.44

## **Schedule C**

### **TLR Interactive and Point-to-Point Service**

This Schedule C is subject to the terms and conditions of the Agreement for Access to Drivers License and Motor Vehicle Records entered into on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the “Agreement”), by and between New Mexico Interactive, LLC (hereafter “Vendor”), and (“Sub-vendor”) and the Terms and Conditions of the New Mexico Interactive Registration Agreement entered into on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (“Monthly Account Holder Agreement”), by and between Vendor and Sub-vendor.

Under the terms of the Agreement, this Service allows Sub-vendor, which meets the eligibility criteria set forth under Drivers Privacy Protection Act. (DPPA) 18 USC § 2721 et. seq. (Public Law 103-322), and Section 66-2-7.1 NMSA 1978 to receive records from MVD's database. Sub-vendor agrees that restrictions on the use of the motor vehicle (TLR) information may be modified by Vendor upon written notice to Sub-vendor at any time.

This service provides two methods for Sub-vendor to request a Motor Vehicle Record (TLR) for which the Sub-vendor is qualified to receive, subject to any limitations on access to or use of the TLR imposed by MVD, as soon as reasonably practical following the Sub-vendor's electronic request.

#### **The Interactive Service:**

- Allows an authenticated Sub-vendor or End User to search for an individual TLR
- Requires the Sub-vendor or End User to input the VIN number of the vehicle
- Allows the Sub-vendor or End User to choose the appropriate TLR from a list of search results
- Allows the Sub-vendor or End User to view and print the selected TLR

#### **The Point-to-Point Service:**

- Allows an authenticated Sub-vendor or End User to request individual TLR
- Requires Sub-vendor or End User to submit record requests using a standard format determined by Vendor
- Assistance is provided by Vendor's technical staff with the initial set-up for a Sub-vendor or End User
- Returns a list of VIN numbers within the database
- Once the user selects the VIN number, the TLR located in the database is sent as a flat text file

Sub-vendor or End User shall pay to Vendor a Fee (defined below) for the Interactive Service in accordance with the following:

1. \$4.95 per TLR (“Fee”) for each TLR that is returned to Sub-vendor or End User whether or not such TLR contains PI.